



INTERIOR BOARD OF INDIAN APPEALS

Estate of Charley (Jack) Santio

4 IBIA 244 (12/02/1975)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
4015 WILSON BOULEVARD
ARLINGTON, VA 22203

ESTATE OF CHARLEY (JACK) SANTIO

IBIA 75-69

Decided December 2, 1975

Petition to reopen.

Granted

1. Indian Probate: Reopening: Waiver of Time Limitation

To avoid perpetuating a manifest injustice, a petition to reopen filed more than 3 years after the final determination of the heirs will be granted where compelling proof is shown that the delay was not occasioned by the lack of diligence on the part of the petitioning party.

2. Indian Probate: Attorneys at Law: Fees

Reasonable fees may be allowed attorney for petitioner in a Departmental reopening where attorney petitions for their allowance and his client agrees that they should be paid, then such fees may be ordered paid from Indian client's recovered distributive share.

APPEARANCES: Rea, Frasse, Anastasi, Clark, Lewis, Glennon, Whitcanack, Burke, Jones & Nielson, by Wallace L. Jones, Esq., for petitioner, Arden Edmond Post.

OPINION BY ADMINISTRATIVE JUDGE SABAGH

Charley (Jack) Santio died intestate March 29, 1968, and the original order closing his estate was entered October 11, 1968, wherein Ida (So-ko-po-ats) Santio, the surviving spouse, was declared sole surviving heir.

On May 21, 1973, more than 3 years after the estate was closed, a petition seeking an order reopening this probate was filed with Administrative Law Judge William J. Truswell on behalf of Arden Edmond Post who it was alleged was legally adopted by the decedent and his surviving spouse, Ida Santio, effective March 28, 1958, and had been omitted as an heir.

Pursuant to a preliminary procedural order issued July 19, 1973, by the then Chairman of this Board, David J. McKee, Judge Truswell held a hearing at Fort Duchesne, Utah, on May 13, 1975, at which time all interested parties were present. Arden Edmond Post was represented by counsel.

Evidence adduced at said hearing clearly establishes and we so find: (1) that Arden Edmond Post was not dilatory in asserting his rights in and to the estate herein, (2) that he is the legally adopted son of decedent and as such entitled to share in his estate as heir under the Utah laws of succession, (3) that the Order Determining Heirs entered in this estate issued on October 11, 1968, resulted from a mistake of such nature as to warrant reopening and correction to avoid perpetuation of a manifest injustice, (4) that the sole heir as originally determined has not only not entered an objection to the reopening of the estate herein but has asserted that petitioner should share in the estate, (5) that there are existing intervening rights in favor of the Ute Tribe to certain of the lands involved which said rights can be perfected and petitioner fully compensated for his interest in said lands from funds held in trust by the Uintah and Ouray Indian Agency, and (6) that attorney fees of \$175.00 charged petitioner by Wallace L. Jones of aforementioned law firm appear reasonable, are so recognized by petitioner, and should be paid.

[1, 2] In view of the above and to avoid perpetuating a manifest injustice, the estate herein should be reopened and the Order Determining Heirs, dated October 11, 1968, modified and corrected to (1) include petitioner as an heir therein, (2) to apportion the shares of the heirs in the estate, and (3) to order attorney fees owed by petitioner paid from his portion of the estate.

NOW, THEREFORE, by virtue of the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the estate of Charley (Jack) Santio, Uncompahgre Allottee 321, FB 944, IS HEREBY REOPENED and the Order Determining Heirs, dated October 11, 1968, IS HEREBY AMENDED, CORRECTED AND MODIFIED to redetermine the decedent's heirs and to apportion their shares as follows, to-wit:

Ida (So-ko-po-ats) Santio,	wife	1/2
Arden Edmond Post,		
Unallotted Ute, FB 887	adoptive son	1/2

FURTHER, IT IS ORDERED, ADJUDGED AND DECREED that the Uintah and Ouray Indian Agency pay Wallace L. Jones of the law firm of Rea, Frasse, Anastasi, Clark, Lewis, Glennon, Whitcanack, Burke, Jones & Nielson the sum of \$175.00 for services rendered to petitioner from any sum due petitioner as a result of this decision.

This decision is final for the Department.

Done at Arlington, Virginia.

//original signed
Mitchell J. Sabagh
Administrative Judge

I concur:

//original signed
Alexander H. Wilson
Administrative Judge